

Approved _____ Mayor _____
Veto _____
Override _____

Agenda Item No. _____

ORDINANCE NO. _____

ORDINANCE PROHIBITING THE UNDERESTIMATING OF PROPERTY TAXES AND ASSESSMENTS IN A TRANSACTION WITH A CONSUMER; PROVIDING A SAFE HARBOR IF A BUSINESS USES THE COUNTY WEBSITE TO ESTIMATE PROPERTY TAXES; PROVIDING DEFINITIONS, A REBUTTABLE PRESUMPTION, VICARIOUS LIABILITY, PENALTY, REMEDIES, PRIVATE CAUSE OF ACTION, SEVERABILITY, INCLUSION IN THE CODE AND AN EFFECTIVE DATE

WHEREAS, certain businesses have provided homebuyers with estimates of future property taxes that seriously understate the actual amount of the ad valorem taxes and non-ad valorem assessments that are subsequently assessed, thereby causing the homebuyers to be misled regarding the amount they must budget to purchase a house and regarding whether they can even afford to purchase the house; and

WHEREAS, the amount of the underestimates have been substantial, for example: in one case, a consumer was told her taxes would be \$3,948 when the actual tax bill was \$6,993; in another case a family was told the amount of taxes would be \$3,869 when the actual tax bill was \$6,938; in another case a homebuyer was told the amount of taxes would be \$3,528 when the actual tax bill was \$7,005; and

WHEREAS, homebuyers naturally experience shock and dismay when they receive a real estate tax bill that is sometimes almost twice the estimate they were given when they decided to purchase the home and they are therefore suddenly confronted with the possibility that they may not be able to make all necessary mortgage, insurance, and tax payments; and

WHEREAS, this problem appears to be caused by the fact that such businesses are using

methods of estimating such taxes and assessments which are outdated and ineffective because (1) past or current ad valorem taxes assessed on a homesteaded property no longer provide a reliable indication of future taxes on the same property after a sale because the “Save our Homes” provision of Article VII, section 4 (c), of the Florida Constitution artificially suppresses the assessment on such a property below fair market value until the property is transferred to a new owner, at which time the assessment is raised to its current fair market value; (2) the traditional methods often failed to include non-ad valorem assessments when such assessments, including Special Taxing Districts and Community Development Districts, are now regularly being used to fund special benefits to real estate and constitute a significant portion of the property tax bill; and (3) the traditional methods often utilized a general estimate of the millage rates rather than the latest available rates for the actual location of the property; and

WHEREAS, the Board of County Commissioners of Miami-Dade County has provided a Tax Estimator computer program on the Property Appraiser’s website for the specific purpose of allowing businesses and others to obtain a quick and fairly-reliable estimate of future real estate taxes and non-ad valorem assessments on a property; and

WHEREAS, this problem would be greatly reduced if businesses used the Tax Estimator Program on the Property Appraiser’s website to calculate estimated future property taxes,

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. A new section of the Miami-Dade County Code is created to read as follows:

Sec. _____. Underestimating Real Estate Taxes to Consumers.

(a) **Definitions.** As used in this ordinance, the following terms will have the meaning indicated:

- (1) “business” shall mean any individual or business entity engaged in the for-profit business of selling real estate, making real estate loans, acting as a mortgage broker, issuing title insurance, or closing on real estate contracts.
- (2) “consumer” shall mean a person (1) who is buying or selling residential real estate for the purpose of residing in the real estate or having a family member reside in the real estate, or (2) who is buying or selling a service or product related to such a transaction, including but not limited to loans, mortgages, and closing services.
- (3) “future property taxes” shall mean the total of annual real estate taxes and non-ad valorem assessments that appears on the annual tax bill issued for the tax year beginning January 1st after the closing of the sale of the property.
- (4) “real estate taxes” shall mean ad valorem property taxes annually assessed and levied on real estate by applicable units of local government pursuant to section 9 of Article 7 of the Florida Constitution.
- (5) “non ad valorem assessments” shall mean any tax, fee, or charge assessed by a special taxing district or other taxing entity, including but not limited to, Community Development Districts for a special benefit to real estate, provided that such tax, fee, or charge is being collected through the annual tax bill issued by the Tax Collector.
- (6) “transaction” shall mean the course of dealings leading up to a contract and the contract itself, including but not limited to, a contract for the purchase of residential real estate, for a loan, for title insurance, for a mortgage, or for closing services on the same.

(b) **Violation.** It shall be a violation of this section for a business intentionally or negligently to underestimate the

future property taxes in a transaction with a consumer. It shall constitute a violation of this section if the business intentionally or negligently provides an estimate of the real estate taxes without also providing an estimate of the non-ad valorem assessments.

- (c) **Rebuttable Presumption.** It shall be a rebuttable presumption that a business intentionally or negligently underestimated the future property taxes if the amount of the property taxes on the actual property tax bill for the tax year beginning January 1st after the closing is 25 % greater than the estimate of the property taxes. In making this calculation, a deduction from the actual tax bill shall be made for (1) any increase in the assessment of the property caused by any act of omission or commission of the consumer, including but not limited to, the consumer's failure to timely file for a homestead exemption or the consumer's actions in making additions or renovations to the property; and (2) any increase in the millage rate by a government entity in excess of the millage rate of that jurisdiction at the time of the estimate.
- (d) **Safe Harbor.** Notwithstanding the other provisions of this ordinance, a business shall be entitled to a safe harbor from the provisions of this ordinance if, prior to the signing of a contract, the business provides the consumer a written estimate of the future property taxes by using the Tax Estimator computer program provided on the Miami-Dade County Property Appraiser's website. To qualify, such estimate must use the most recent millage rate of the jurisdictions in which the property is located and no less than the anticipated purchase price of the subject property. In such event, it shall be deemed that no violation of this ordinance occurred for that transaction.
- (e) **Vicarious Liability.** A business shall be vicariously liable for the violations of this ordinance by its employees and agents and are subject to the penalties and remedies, including damages, provided herein. Such vicarious liability shall not excuse a business entity or person from direct liability under this ordinance.
- (f) **Penalty.** The first violation of this ordinance by a business shall be punished by a fine of five hundred dollars. The second and each subsequent violation of this ordinance

shall be punished by a fine of one thousand dollars.

- (g) **Private Right of Action for Damages.** Any consumer who enters into a contract in reliance on an estimate of future property taxes which estimate is in violation of this ordinance shall have a private right of action to sue for damages that resulted from the violation. Damages for taxes shall not exceed the multiple of five times the difference between the estimate of future property taxes and actual property taxes that appears on the tax bill for the tax year beginning January 1st after the closing. Any consumer prevailing in an action authorized by this section shall be entitled to an award of its attorney's fees.

Section 2. Chapter 8CC of the Code of Miami-Dade County, Florida, is hereby amended to read as follow:¹

<i>Code Section</i>	<i>Description of Violation</i>	<i>Civil Penalty</i>
>> _____ [add new section]	* Underestimating future property taxes	* First violation \$500.00; additional violations \$1,000.00<<

Section 3. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity. Thus, for purposes of example and not for purposes of limitation, if this ordinance is determined to be invalid as to any particular industry or profession, it shall continue to be valid as to the other businesses covered by this ordinance; if any remedy in this ordinance is determined to be invalid, the remaining remedies shall continue to be valid; if any presumption in the ordinance is determined to be invalid, the remainder of the ordinance shall continue to be valid.

Section 4. It is the intention of the Board of County Commissioners, and it is hereby

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

Section 5. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

Approved by County Attorney as
to form and legal sufficiency:

Prepared by:

Thomas W. Logue

Sponsored by Commissioner Dennis C. Moss